IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 36 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DINESHCHANDRA N RAVAL - Petitioner(s)

Versus

SECRETARY & 2 - Respondent(s)

==========

Appearance :
Mr. Saurabh Mehta for MR YN OZA for Petitioner(s) : 1,
Mr. K.P. Raval, learned AGP for Respondent(s) : 1, 1.2.1,1.2.2 - 3.
NOTICE SERVED for Respondent(s) : 1.2.1,1.2.2
==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 16/02/2006

ORAL JUDGMENT

1.The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the order dated 31.12.1993 discharging him on the

ground of his failure in passing the Pre-service Training Examination within stipulated chance.

2. The petitioner was appointed as a Junior Clerk on compassionate ground on 4/6/1987. As it is submitted by the petitioner, he was initially appointed as Junior Clerk in the office of the Police Commissioner, Ahmadabad City, but on account of non-availability of vacant post of Junior Clerk in the office of the Police Commissioner, Ahmedbad City, he was transferred to Gandhinagar on 29/11/1990. The appointment of the petitioner was on condition of his passing the Pre Service Training Examination in prescribed chances, namely three. The petitioner appeared twice in the pre service training examination and failed. The petitioner third time applied for appearing in the Pre-service Training Examination scheduled on 29.6.1993 and 30.6.1993 and was also allowed to appear in the examination but he could not appear in the said examination on account of his wife's tubectomy operation on the day of examination. The petitioner submits that, thus, this chance could not have been considered to be a chance as he could not appear in the examination and he ought to have been given one more

chance for appearing in the pre service training examination. The non appearance of the petitioner in the scheduled pre service training examination can not be considered to be availing the chance and failing therein. He has further submitted that his non appearance was warranted due to unavoidable circumstances and therefore, he could not appear in the examination. The petitioner addressed a communication on 12/7/1993 to the Deputy Collector, Regional Training Center for getting permission for appearing in the examination as he could not appear on the earlier occasion due to tubectomy operation of his wife. The Deputy Collector, Regional Training Center replied vide his letter dated 25.8.1993 that non considering the absence of the petitioner on the date of the examination as third chance is a subject matter outside his purview and the petitioner was therefore, required to approach the General Administration Department of the State Government. The petitioner seems to have made a representation dated 15.10.1993 reiterating his request to Secretary, General Administration Department, Sachivalaya. His representation, however, seems to have not been accepted by the State Government. The impugned order came to be passed on

31/12/1993 discharging the petitioner on account of his failure in clearing the pre service training examination within the stipulated chances. The learned counsel Shri. Saurabh Mehta for Shri. Oza, learned counsel for the petitioner has vehemently contended that failure of the petitioner in availing the last chance could not have been considered as his failure in the examination, and in all fairness it was expected of the respondent authorities to afford him one more chance. The petitioner could not appear on the 3rd attempt on account of unavoidable circumstance and therefore the impugned order which is passed without taking into consideration those circumstances amounts to arbitrariness and therefore same be quashed and set aside.

3. The petitioner was in fact appointed on compassionate grounds and it was clearly mentioned in the appointment order dated 2/6/1987 that as per the provisions of Resolution dated 17/4/1970 he was required to clear the pre service training examination within the stipulated chances. This communication is at Annexure-B on page-19 of the petition. The services of the petitioner was to be confirmed only after his

clearing pre service training examination as stipulated in the appointment order.

4. It is an admitted position that petitioner has not cleared the said examination despite full opportunities afforded to the petitioner. The ground urged by the petitioner for his inability to appear in the last chance does not inspire confidence. The ground, namely tubectomy operation of his wife can not be said to be an inevitable circumstance preventing him from appearing at the examination. This type of operation is always well planned in advance and for such an operation no emergency is pleaded. Learned advocate of the petitioner has not pointed out any emergency warranting such an operation on the scheduled date of the examination. In view of this, as the petitioner has failed in availing opportunity of clearing the examination within the stipulated chance, the impugned order has rightly been passed. This Court under Article 226 of the Constitution, is not inclined to interfere with the impugned order of discharge as the same is not suffering from any infirmities and is in no way in violation of petitioner's any fundamental right nor is it in violation of statutory rights. As the petition

order is bereft of any merit, it deserves to be dismissed and is accordingly dismissed. Rule is discharged. No order as to costs.

[S.R. BRAHMBHATT, J]

/vgn